

FILED

US DISTRICT COURT  
WESTERN DISTRICT  
OF ARKANSAS

Nov 1, 2018

OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP A. BUTCHER,  
PAULINE BUTCHER, and  
BENTON COUNTY TAX COLLECTOR,

Defendants.

Case No. 18-5213

**COMPLAINT**

Plaintiff, United States of America, alleges as follows:

1. The United States brings this civil action to (1) reduce to judgment federal income tax assessments against Philip A. Butcher, (2) reduce to judgment federal civil penalty assessments against Butcher, (3) enforce federal tax liens against real property located at 1119 S. 13th St., Rogers, Arkansas 72578 and the adjoining real property with no street address (together, the "Property"), to satisfy, in part, Butcher's federal tax liability, (4) obtain an order authorizing the sale of the Property, and (5) have the proceeds from the sale distributed in amounts determined by the Court.

2. This action is commenced at the request and with the authorization of a delegate of the Secretary of the Treasury and at the direction of the Attorney General pursuant to 26 U.S.C. §§ 7401 and 7403(a).

### **Jurisdiction and Venue**

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402 and 7403.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because this is the district where defendant Philip Butcher resides and where the Property is located.

### **Parties**

5. Plaintiff is the United States of America.

6. Defendant Philip A. Butcher (“Butcher”) resides at the Property in Benton County, Arkansas.

7. Defendant Pauline Butcher resides in Centerton, Arkansas. Pauline Butcher is named as a defendant to Count III of this suit, pursuant to 26 U.S.C. § 7403(b), because she may claim an interest in the Property.

8. The Benton County Tax Collector is a local government entity located in Benton County, Arkansas, within the jurisdiction of this Court. The Benton County Tax Collector is named as a defendant to Count III of this suit, pursuant to 26 U.S.C. § 7403(b), because it may claim an interest in the Property.

### **Butcher’s Tax Liabilities**

9. On or about March 17, 2009, Butcher filed with the IRS a false Individual Income Tax Return (IRS Form 1040) for tax year 2008 wherein he sought and received a fraudulent tax refund of \$672,781.

10. Butcher’s fraudulent refund claim was based on the Form 1099 Original Issue Discount (OID) tax scheme. Although there are some variations, in the typical OID tax scheme, a taxpayer falsely claims on his or her tax return that the taxpayer received taxable income from bond proceeds but that federal income tax on the income had been over-withheld. In this way,

the taxpayer claims to be entitled to a large, and fraudulent, refund. The “income” is typically calculated based on the taxpayer’s outstanding debts, such as mortgages and/or consumer debt, and the tax return might list the taxpayer’s creditors as purported payers of bond interest. The scheme often includes a component in which the taxpayer alleges that he or she has a secret account with the United States Treasury and the OID claim is a withdrawal from that fund.

11. On his 2008 federal income tax return, Butcher falsely claimed that he received \$981,502 in taxable bond interest from Bank of England, ANB Bancshares Inc., Signature Bank of Arkansas, Arvest Bank, Bank of America, and Citicard and had a federal income tax liability of \$308,020. He also falsely claimed that the purported payers withheld \$672,781 as federal income tax payments. Based on these fabricated amounts, Butcher claimed that he was entitled to a \$672,781 refund.

12. As a result of his false claim, Butcher incorrectly received a refund of \$672,781 from the IRS.

13. On or about April 30, 2009, Butcher filed an amended federal income tax return for tax year 2008 claiming that he was entitled to a further \$1,456,696 refund, but his amended return was not accepted by the IRS and Butcher did not receive a further refund.

14. On May 24, 2011, Butcher was indicted on two charges of presenting a false, fictitious, or fraudulent claim to the United States, pursuant to 18 U.S.C. § 287, for submitting his federal tax return and his first amended federal tax return for tax year 2008. *See United States v. Butcher*, No. 5:11-cr-50057-001 (W.D. Ark.) (indictment filed May 25, 2011).

15. On January 18, 2012, Butcher pleaded guilty to one count of presenting a false or fraudulent claim to the United States, pursuant to 18 U.S.C. § 287, for tax year 2008. *See United States v. Butcher*, No. 1:11-cr-20873-PAS (S.D. Fla.) (change of plea hearing held and plea

agreement filed Jan. 18, 2012). On February 4, 2013, the court entered a Judgment ordering Butcher to pay restitution in the amount of \$542,769.74. *Id.*, ECF No. 39.

16. In 2012, pursuant to his plea agreement, Butcher filed an amended federal income tax return for tax year 2008 correcting the fabricated information that he had supplied and showing \$674,742 in unpaid tax due.

17. The IRS assessed civil penalties under 26 U.S.C. § 6702 against Butcher because Butcher filed frivolous purported federal income tax returns that claimed false withholdings and falsely claimed refunds.

18. In October 2015, Butcher filed his federal income tax return for tax year 2014, reporting unpaid tax due.

**COUNT I: Reduce 2008 Criminal Restitution Assessment to Judgment**

19. The United States incorporates by reference paragraphs 1-6 and 9-16 of this Complaint.

20. For the 2008 tax year, on the dates and in the amounts indicated below, a delegate of the Secretary of the Treasury made assessments against Butcher for federal income taxes, penalties, and interest. The amount due, with interest and other statutory additions through September 30, 2018, is stated in the chart below.

<b>Date of Assessment</b>	<b>Assessed Amount</b>	<b>Assessed Interest</b>	<b>Assessed Penalty</b>	<b>Unpaid Balance of Assessment</b>
5/12/2009	\$980,801.00	\$2,536.62		
12/10/2012		\$74,029.71	\$136,237.90	\$687,288.86
2/11/2013		\$3,887.30		

21. For the 2008 tax year, on the date and in the amount indicated below, a delegate of the Secretary of the Treasury made assessments against Butcher for criminal restitution and

interest pursuant to 26 U.S.C. § 6201(a)(4). The amount due, with interest and other statutory additions through September 30, 2018, is stated in the chart below.

<b>Date of Assessment</b>	<b>Assessed Amount</b>	<b>Assessed Interest</b>	<b>Unpaid Balance</b>
6/24/2013	\$542,769.74	\$86,505.23	\$535,720.17
<b>Total:</b>			<b>\$535,720.17</b>

22. On or about the dates of the assessment for criminal restitution set forth in paragraph 21, the IRS gave Butcher notice of the assessment and demand for payment.

23. Despite notice and demand for payment, Butcher has failed to pay over the amounts assessed against him.

24. The amount due by virtue of the assessments set forth in paragraph 21, above, for criminal restitution for tax year 2008, with interest and other statutory additions, totals \$535,720.17 through September 30, 2018.

25. Statutory interest will continue to accrue on the amounts owed the United States until the balance is paid in full, pursuant to 26 U.S.C. §§ 6601, 6621, and 6622.

WHEREFORE, the United States requests that the Court:

(a) Enter judgment on Count I of this Complaint in favor of the United States and against Philip Butcher for \$535,720.17 as of September 30, 2018, plus further interest and statutory additions according to law; and

(b) Grant the United States its costs incurred in the commencement and prosecution of this action and such other and further relief as the Court deems proper.

#### **COUNT II: Reduce 2014 Income Tax Assessments to Judgment**

26. The United States incorporates by reference paragraphs 1-6 and 18 of this Complaint.

27. For the 2014 tax year, on the dates and in the amounts indicated below, a delegate of the Secretary of the Treasury made assessments against Butcher for federal income taxes, penalties, and interest. The amount due, with interest and other statutory additions through September 30, 2018, is stated in the chart below.

<b>Date of Assessment</b>	<b>Assessed Amount</b>	<b>Assessed Interest</b>	<b>Assessed Penalty</b>	<b>Unpaid Balance</b>
12/14/2015	\$7,994.00	\$132.68	\$261.88	<b>\$4,354.86</b>
12/4/2017		\$258.88	\$619.12	

28. On or about the dates of the income tax assessments for tax year 2014 set forth in paragraph 27, the IRS gave Butcher notice of the assessment and demand for payment.

29. Despite notice and demand for payment, Butcher has failed to pay over the amounts assessed against him.

30. The amount due by virtue of the assessments set forth in paragraph 27, above, for tax year 2014, with interest and other statutory additions, totals \$4,354.86 through September 30, 2018.

31. Statutory interest will continue to accrue on the amounts owed the United States until the balance is paid in full, pursuant to 26 U.S.C. §§ 6601, 6621, and 6622.

WHEREFORE, the United States requests that the Court:

(c) Enter judgment on Count II of this Complaint in favor of the United States and against Philip Butcher for \$4,354.86 as of September 30, 2018, plus further interest and statutory additions according to law; and

(d) Grant the United States its costs incurred in the commencement and prosecution of this action and such other and further relief as the Court deems proper.

**COUNT III: Reduce 2008 Civil Penalty Assessment to Judgment**

32. The United States incorporates by reference paragraphs 1-6 and 9-17 of this Complaint.

33. For the 2008 tax year, on the dates and in the amounts indicated below, a delegate of the Secretary of the Treasury made assessments against Butcher for a civil penalty for filing a frivolous income tax return and interest on the penalty. The amount due, with interest and other statutory additions through September 30, 2018, is stated in the chart below.

Tax Year	Date of Assessment	Assessed Amount	Assessed Interest	Unpaid Balance
2008	12/10/2012	\$10,000		
	12/5/2016		\$1,211.81	\$10,489.46
	12/4/2017		\$394.84	
Total:				\$10,489.46

34. On or about the dates of the civil penalty assessments for tax year 2008 set forth in paragraph 33, the IRS gave Butcher notice of the assessment and demand for payment.

35. Despite notice and demand for payment, Butcher has failed to pay over the amounts assessed against him.

36. The amount due by virtue of the civil penalty assessments set forth in paragraph 33, above, for tax year 2008, with interest and other statutory additions, totals \$10,489.46 through September 30, 2018.

37. Statutory interest will continue to accrue on the amounts owed the United States until the balance is paid in full, pursuant to 26 U.S.C. §§ 6601, 6621, and 6622.

WHEREFORE, the United States requests that the Court:

(a) Enter judgment on Count III of this Complaint in favor of the United States and against Philip Butcher for \$10,489.46 as of September 30, 2018, plus further interest and statutory additions according to law; and

(b) Grant the United States its costs incurred in the commencement and prosecution of this action and such other and further relief as the Court deems proper.

**COUNT IV: Enforce Federal Tax Liens Against the Property**

38. The United States incorporates by reference paragraphs 1 through 37 of this Complaint.

39. By general warranty deed dated March 31, 1996, Philip A. Butcher and Pauline Butcher acquired the Property, consisting of the real property located at 1119 S. 13th St., Rogers, Arkansas 72578 and the adjoining property with no street address. These properties have a legal description of:

Lot 2, Roman Acres, a subdivision of part of the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , Section 13, Township 19 North, Range 30 West, Rogers, Benton County, Arkansas, subject to covenants and restrictions of record.

*and*

Lot 3 of Roman Acres, Rogers, Arkansas, Benton County.

40. By a quitclaim deed dated September 23, 2014, Pauline Butcher conveyed her interest in the Property to Philip A. Butcher.

41. By reason of the assessments described in paragraphs 21, 27, and 33, and pursuant to 26 U.S.C. §§ 6321 and 6322, federal tax liens for the unpaid taxes, interest, and penalties arose on the dates of assessment. These tax liens attached to all property and rights to property Butcher then owned or thereafter acquired, including his interest in the Property.

42. The IRS filed notices of federal tax liens against Butcher with the Circuit Clerk and Recorder in Benton County, Arkansas, as follows:



<b>Tax Year</b>	<b>Tax Type</b>	<b>Date NFTL Recorded</b>
2008	Income	5/15/2009 7/15/2009
2008	Civil Penalty	6/9/2014
2008	Criminal Restitution	7/22/2014
2014	Income	4/4/2016

43. The federal tax liens described in paragraphs 41 and 42 attach to, and should be enforced against, the Property, and the Property should be sold pursuant to Court order.

WHEREFORE, the United States requests that the Court:

(a) Grant judgment on Count IV of this Complaint in favor of the United States and declare that the United States has valid and subsisting federal tax liens upon all property and rights to property of Philip Butcher, including the Property;

(b) Order that the federal tax liens be enforced against the Property, and that the Property be sold;

(c) Order that any defendants claiming an interest in the subject real property superior to the federal tax liens affirmatively demonstrate that interest, including the amount of the interest;

(d) Determine the rights and relative priorities of the parties to the proceeds of the sale, and disburse those proceeds accordingly; and

(e) Grant the United States such other and further relief as the Court deems just and proper, including its costs incurred in this suit.

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Dated: November 1, 2018

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